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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 10/020,779      | 12/14/2001  | Scott R. Swix        | 01377               | 9532             |

38516

7590

01/23/2009

AT&T Legal Department

Attn: Patent Docketing

Room 2A-207

One AT&T Way

Bedminster, NJ 07921

EXAMINER

ART UNIT

PAPER NUMBER

DATE MAILED: 01/23/2009

Please find below and/or attached an Office communication concerning this application or proceeding.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Newly amended claims 1-6, 8, and 17-20 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Original claims 1-6, 8, and 17-20 were directed towards a method and system that received programming content containing advertisements, categorizing the advertisements, at the network provider's server, as overrideable or non-overrideable, receiving a request from the advertiser to replace an advertisement with a different advertisement, determining if the advertisement that is to be replaced is overridable and based upon whether the advertisement is overridable or not and some other compatibility issues replacing the advertisement. However, newly amended claims 1-6, 8, and 17-20 are directed towards a different invention in which a method or system stores a webpage in memory for distribution to advertisers, storing an advertising schedule for scheduled programming and advertisement characteristics for advertisement time slots in memory, sending the webpage to advertisers notifying them of a future advertisement time slot, receiving advertisements from advertisers, where by the advertisers characterize the advertisement as overrideable or non-overrideable, storing the advertisements in memory and using the database to select and schedule an advertisement for insertion, then receiving the webpage from the advertiser request to override the schedule advertisement. As is obvious from the description the two sets of claims represent distinct inventions. The original claims recieved advertisements replacement requests for advertisement that have already been placed in the

programming content and categorized the advertisements as overrideable or non-overridable at the network provider's server. The newly submitted claims receive advertisements from advertisers and place them in content then receive a request to replace the advertisements and the categorization as to whether the advertisement is overrideable or not is done by the advertiser that submits the first advertisement rather than having the operation done by the network server.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1-6, 8, and 17-20 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03. Since the withdrawal of claims 1-6, 8, and 17-20 result in no currently pending claim for prosecution, the amendment is considered non-responsive. The examiner suggests amending the claims to recite an invention that is consistent with the invention that was originally present.

### ***Conclusion***

2. Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOHN VAN BRAMER whose telephone number is (571)272-8198. The examiner can normally be reached on 6am - 4pm Monday through Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

John Van Bramer  
/John Van Bramer/  
Examiner, Art Unit 3622

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